

U.S. DISTRICT COURT
IN EASTERN DISTRICT OF MICHIGAN

DARRYL PELICHET, *et al.*,

Plaintiff,

v

ROBERT GORDON, *et al.*,

Defendants.

Case No.: 2:18-cv-011385-APP

HON. ANTHONY P. PATTI

**ANSWER TO PLAINTIFF'S
FIRST AMENDED COMPLAINT
ON BEHALF OF HEGIRA
PROGRAMS, INC.**

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ANSWER TO PLAINTIFF’S FIRST AMENDED COMPLAINT
ON BEHALF OF HEGIRA PROGRAMS, INC.

NOW COMES Defendant, HEGIRA PROGRAMS, INC., by and through its attorneys, CARDELLI LANFEAR, P.C., and for its Answer to Plaintiff’s First Amended Complaint, states as follows:

JURISDICTION AND VENUE

1. Defendant neither admits nor denies the allegations as Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

2. Defendant neither admits nor denies the allegations as Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

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**COUNT I:
DEPRIVATION OF RIGHTS GUARANTEED BY THE CONSTITUTIONS
AND LAWS OF THE UNITED STATES AND THE STATE OF MICHIGAN
(All Defendants)**

**A. Procedural Due Process Violations under the Fourteenth Amendment,
pursuant to 42 U.S.C. § 1983.**

171. Defendant incorporates its responses to the proceeding paragraphs.

172. Defendant neither admits nor denies the allegations as Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

173. Denied in the manner and form as stated.

174. Denied in the manner and form as stated.

175. Denied in the manner and form as stated.

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262. Defendant neither admits nor denies the allegations as Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

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271. Defendant neither admits nor denies the allegations as Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

272. Defendant neither admits nor denies the allegations as Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

273. Defendant neither admits nor denies the allegations as Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

274. Denied in the manner and form as stated.

275. Defendant neither admits nor denies the allegations as Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

276. Defendant neither admits nor denies the allegations as Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

277. Defendant neither admits nor denies the allegations as Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

278. Denied in the manner and form as stated.

**COUNT II:
DEPRIVATION OF RIGHTS GUARANTEED BY TITLE II OF THE
AMERICANS WITH DISABILITIES ACT
(Defendant MDHHS, MDHHS Contractor and Subcontractor Defendants,
and Defendant MDHHS employees (including Nick Lyon) in their official
capacities)**

279. Defendant incorporates its responses to the proceeding paragraphs.

280. Defendant neither admits nor denies the allegations as Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

281. Defendant neither admits nor denies the allegations as Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

282. Defendant neither admits nor denies the allegations as Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

283. Defendant neither admits nor denies the allegations as Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

284. Defendant neither admits nor denies the allegations as Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

285. Denied in the manner and form as stated.

286. Defendant neither admits nor denies the allegations as Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

287. Defendant neither admits nor denies the allegations as Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

288. Denied in the manner and form stated.

289. Denied in the manner and form stated.

290. Denied in the manner and form stated.

**COUNT III:
VIOLATION OF SECTION 504 OF THE REHABILITATION ACT
(Defendant MDHHS, Defendant MDHHS employees in their official
capacities, and CMH Contractor and Subcontractor Defendants)**

291. Defendant incorporates its responses to the proceeding paragraphs.

292. Defendant neither admits nor denies the allegations as Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

293. Denied in the manner and form as stated.

294. Defendant neither admits nor denies the allegations as Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

295. Defendant neither admits nor denies the allegations as Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

296. Denied in the manner and form as stated.

297. Denied in the manner and form as stated.

298. Denied in the manner and form as stated.

WHEREFORE, Defendant prays for a Judgment of no cause of action against Plaintiff, together with costs, interest and attorney fees so wrongfully sustained.

REQUEST FOR RELIEF

WHEREFORE, Defendant Hegira respectfully requests this Honorable Court enter an Order dismissing all the claims against it with prejudice, and denying Plaintiffs' in their request for relief, together with actual costs and attorney's fees in having to respond to this lawsuit.

Respectfully Submitted,

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Dated: February 12, 2021.

U.S. DISTRICT COURT
IN EASTERN DISTRICT OF MICHIGAN

DARRYL PELICHET, *et al.*,

Plaintiff,

v

ROBERT GORDON, *et al.*,

Defendants.

Case No.: 2:18-cv-011385-APP

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SPECIAL AND AFFIRMATIVE DEFENSES

Defendant Hegira asserts the following special and affirmative defenses:

First Affirmative Defense

Plaintiffs fail to state a claim upon which relief can be granted.

Second Affirmative Defense

Plaintiffs may lack standing to bring their claims.

Third Affirmative Defense

Plaintiffs' claims may be barred from recovering damages, in whole or in part, by reason of their failure to take reasonable steps to mitigate any alleged damages as required by law.

Fourth Affirmative Defense

To the extent that Plaintiffs have suffered any damages, the same were wholly or partially caused by Plaintiff's own conduct, or the conduct of any Co-Defendant named in this litigation. Discovery and/or investigation may reveal that Plaintiffs' claims are barred by the independent, supervening, negligent, intentional, reckless, and/or criminal conduct of others.

Fifth Affirmative Defense

Plaintiffs' claims may be barred by the doctrines of collateral estoppel and/or res judicata.

Sixth Affirmative Defense

Discovery and/or investigation may reveal that Plaintiffs' claims are barred, in whole or in part, because of spoliation of evidence.

Seventh Affirmative Defense

Hegira Programs did not breach any legal duty owed to Plaintiffs.

Eighth Affirmative Defense

Hegira Programs did not act in a negligent or grossly negligent manner.

Ninth Affirmative Defense

No conduct on the part of Hegira Programs, whether in the form of any act or omission, was the cause or proximate cause of any of the damages Plaintiffs allege to have sustained.

Tenth Affirmative Defense

Plaintiffs' claims may be barred to the extent that they seek relief in connection to a state court judgement or ruling.

Eleventh Affirmative Defense

Plaintiffs' claims may be barred under the doctrines of laches or unclean hands.

Twelfth Affirmative Defense

Plaintiffs' claims are barred by the applicable statute of limitations.

Thirteenth Affirmative Defense

Plaintiffs' claims are barred to the extent that any and all damages Plaintiffs claim to have sustained are directly attributable to Plaintiffs' own violation of their respective ALS contracts, constituting self-inflicted injuries. Plaintiffs were fully apprised of the consequences for violation of the ALS contracts, yet repeatedly violated the same.

Fourteenth Affirmative Defense

If Hegira Programs is deemed not to be a state actor, then it cannot be said to have acted under color of state law, and thus this Court has no subject matter jurisdiction because Plaintiffs have failed to properly plead a federal question as to Hegira Programs.

Fifteenth Affirmative Defense

To the extent that Hegira Programs is deemed to be a state actor, it cannot be held vicariously liable for the actions of any Co-Defendant, nor the ultimate decision by the state probate court to ultimately continue Plaintiffs on NGRI status.

Sixteenth Affirmative Defense

To the extent that Hegira Programs is deemed to be a state actor, it cannot be deemed to have violated any constitutional or fundamental right of the Plaintiffs, including the Fourteenth Amendment's guarantee of procedural and substantive due

process and equal protection, nor the Eighth Amendment's prohibition of cruel and unusual punishment.

Seventeenth Affirmative Defense

To the extent that Hegira Programs is deemed to be a state actor, it engaged in no conduct, or omission thereof, that can be deemed "conscious shocking" to the Court.

Eighteenth Affirmative Defense

To the extent that Hegira Programs is deemed to be a state actor, it engaged in no conduct that can be said to constitute discriminatory treatment of Plaintiffs in comparison to similarly situated individuals as proscribed by the Equal Protection Clause of the Fourteenth Amendment.

Nineteenth Affirmative Defense

To the extent that Hegira Programs is deemed to be a state actor, it engaged in no conduct that demonstrates a "deliberate indifference" of the medical needs of any Plaintiff such that would constitute "unnecessary and wanton infliction of pain," nor criminal recklessness as proscribed by the Eighth Amendment.

Twentieth Affirmative Defense

To the extent that Hegira Programs is deemed subject to the Americans with Disabilities Act, Plaintiffs claims thereunder are barred because Hegira Programs engage in no discrimination on the basis of any disability claimed by Plaintiffs.

Twenty-first Affirmative Defense

To the extent that Hegira Programs is deemed subject to the Rehabilitation Act, Plaintiffs claims thereunder are barred because Hegira Programs engaged in no discrimination solely by reason of any disability claimed by Plaintiffs.

Twenty-second Affirmative Defense

Any action undertaken by Hegira Programs was in accord with the policies and procedures in place under the Michigan Mental Health Code at the time.

Twenty-third Affirmative Defense

Plaintiffs' claims are barred by their failure to exhaust all administrative remedies or timely seek relief from a state court order.

Twenty-fourth Affirmative Defense

Plaintiffs fail to assert any actionable conspiracy by Defendants to violate their rights.

Twenty-fifth Affirmative Defense

Plaintiffs' claims are barred by 42 USC 12114(a).

Twenty-sixth Affirmative Defense

Plaintiffs' claims are barred by release, waiver, or consent, as Plaintiffs, or their authorized agents/representatives, consented to and/or agreed to the very conditions they purport to be the basis of their claims.

Twenty-seventh Affirmative Defense

All Hegira Programs' employees' actions were based upon their respective professional opinions and were without regard to any influence by the State of Michigan.

Twenty-eighth Affirmative Defense

Hegira Programs hereby incorporates by reference the Affirmative Defenses of all Co-Defendants in this litigation.

RESERVATION OF RIGHTS

Hegira Programs hereby reserves the right to amend these Affirmative Defenses, including supplementing the same, as discovery continues.

Respectfully Submitted,

CARDELLI LANFEAR, P.C.

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Dated: February 12, 2021.

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<p><u>HEGIRA'S RELIANCE ON JURY</u> <u>DEMAND</u></p>

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RELIANCE ON JURY DEMAND

NOW COMES Defendant Hegira Programs, Inc., through its attorneys, and hereby relies upon the jury demand filed by Plaintiffs as to all claims and defenses.

Respectfully Submitted,

CARDELLI LANFEAR, P.C.

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PROOF OF SERVICE

I, Melissa Robins, hereby certify that on the 12th day of February, 2021, a copy of **ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT ON BEHALF OF HEGIRA PROGRAMS, INC., SPECIAL AFFIRMATIVE DEFENSES, RELIANCE ON JURY DEMAND** and this **PROOF OF SERVICE** were served upon the attorneys of record of all parties to the above cause by:

<input type="checkbox"/> First Class Mail	<input type="checkbox"/> Facsimile	<input type="checkbox"/> Email
<input type="checkbox"/> Fed Ex	<input type="checkbox"/> Hand Delivery	<input checked="" type="checkbox"/> E-File

I declare under the penalty of perjury that the statement above is true to the best of my information, knowledge and belief.

/s/ Choka Johnson
Choka Johnson, Legal Assistant